

TYE G. MERRITT, ESQ. (State Bar No. 235750)  
MERRITT LAW, INC., A Professional Law Corporation  
3200 E. Guasti Road, Suite 100  
Ontario, CA 91761  
Tel: (909) 476-0651  
Fax: (909) 303-9013  
Email: tye@mlawinc.com

Attorney for Movant, HSBC Bank USA, National  
Association as Trustee for the Holders of the  
certificates issued by Deutsche Alt-A Securities  
Mortgage Loan Trust, Series 2006-AR3

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA, SANTA ROSA DIVISION

In re

Carl Alexander Wescott *dba* Noriega Owner's  
Association *dba* Dehli Mini Storage, LLC *dba*  
Livingston Retail LLC *dba* Miracle Solutions,  
Inc. *dba* 11385 East Road, LLC *dba* EduTain,  
Inc. *dba* KnightRidge Wines, Inc. *dba*  
EyeThink ErgoSound Inc. *dba* Pook Snook  
Dook Limited Partnership *dba* The Stanford-  
Wescott Corporation *dba* Gyrosoft, Inc. *dba*  
9501 Lane Drive, LLC *dba* Surprise  
Development, Inc. *dba* Chuluganti  
Investments, Inc. *dba* Sycamore Investment  
Partners, Inc. *dba* Broadband Mechanics, Inc.  
*dba* Bradshaw Urban Development, LLC *dba*  
Ayss Mini Storage, LLC *dba* Oroville  
Industrial Park, LLC *dba* Mississippi Street,  
LLC *dba* Noesis Partners, Inc *dba*  
PeopleBridge, Inc. *dba* The MultiMedia  
Advantage, Inc.  
Monette Stephens, Co-Debtor,

Debtor.

HSBC Bank USA, National Association as  
Trustee for the Holders of the certificates  
issued by Deutsche Alt-A Securities Mortgage  
Loan Trust, Series 2006-AR3,

Case No. 16-10975

R.S. No.: TGM-1

Judge Hannah L. Blumenstiel

Chapter 7

**MOTION FOR RELIEF FROM STAY  
(REAL PROPERTY)**

**Preliminary Hearing:**

Date: January 10, 2019

Time: 9:30 a.m.

Place: 99 South "E" Street, Santa Rosa, CA  
95404

**MOTION FOR RELIEF FROM STAY (REAL PROPERTY)**

1 Movant,

2 vs.

3 Carl Alexander Wescott, Debtor; and Linda S.  
4 Green, Chapter 7 Trustee,

5 Respondents.  
6

7 ///

8 ///

9 HSBC Bank USA, National Association as Trustee for the Holders of the certificates issued  
10 by Deutsche Alt-A Securities Mortgage Loan Trust, Series 2006-AR3 ("Movant")<sup>1</sup> will and hereby  
11 does move, pursuant to 11 U.S.C. § 362(d), and Rule 4001 of the Federal Rules of Bankruptcy  
12 Procedure, for an order terminating the automatic stay of 11 U.S.C. § 362(a) as it applies to Movant  
13 and the real property located at 853 Ashbury Street, San Francisco, CA 94117.  
14

15 GROUND FOR RELIEF  
16

17 Pursuant to 11 U.S.C. § 362(d)(1), a party may seek relief from stay for cause, including the  
18 lack of adequate protection of an interest in property of such party in interest. While granting relief  
19 for cause includes a lack of adequate protection, there are other grounds. See *In re J E Livestock,*  
20 *Inc.*, 375 B.R. at 897. The court maintains the right to grant relief from stay for cause when a  
21 debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not  
22 requirement payments, or is using bankruptcy as a means to delay payment or foreclosure. *W.*  
23 *Equities, Inc., v. Harlan*, 783 F.2d 839 (9<sup>th</sup> Cir. 1986); *Ellis v. Parr*, 60 B.R. 432 (B.A.P. 9<sup>th</sup> Cir.  
24 1985).

25 In this case, the Debtor has failed to make pre and post-petition payments to the Movant.  
26 The Debtor is contractually due for the August 1, 2010 payment. In fact, 100 payments have come

27 <sup>1</sup> Pursuant to Fed. R. Civ. P. 4, made applicable to this proceeding by Fed. R. Bankr. P. 7004, notwithstanding Merritt  
28 Law, Inc.'s participation in this proceeding. Moreover, the within party does not authorize Merritt Law, Inc., either  
expressly or impliedly through Merritt Law, Inc.'s participation in this proceeding, to act as its agent for purposes of  
service under Fed. R. Bankr. P. 7004.

**MOTION FOR RELIEF FROM STAY (REAL PROPERTY)**

1 due and were not paid. The Debtor is contractually delinquent in the amount of \$1,093,293.67. An  
2 additional payment of \$14,716.25 will come due on December 1, 2018. As a result of the  
3 contractual default, a Notice of Default was recorded on February 26, 2018. See Declaration in  
4 Support of Motion for Relief. See Declaration in Support of Motion for Relief, Page 2, Paragraph  
5 5.

6  
7 Pursuant to 362(d)(2), the debtor does not have any equity in the subject Property and the  
8 Property is not necessary to an effective reorganization. Movant is informed and believes, based on  
9 the Broker's Price Opinion ("BPO") that the fair market value of the Property is approximately  
10 \$2,580,000.00. Movant maintains that the Debtor and/or the estate's equity in the Property is as  
11 follows:

12 Fair Market value per BPO: \$2,580,000.00

13  
14 Less: First Deed of Trust \$2,874,432.65

15 Costs of Sale (8%) \$ 206,400.00

16 Total: \$3,080,832.65

17 Equity in Property ( 500,832.65)

18 Based on the above, there is no equity in the Property for the benefit of the bankruptcy  
19 estate.

20  
21 This Motion is also based on the Notice of Motion for Relief from Automatic Stay,  
22 Memorandum of Points and Authorities in Support of Motion for Relief from Automatic Stay, and  
23 Declaration in Support of Motion for Relief from Automatic Stay filed concurrently herewith, the  
24 pleadings and papers on file herein, and upon such oral and documentary evidence as may be  
25 presented by the parties at the hearing.

26 **WHEREFORE**, Movant prays that this Court issues an Order as follows:

- 27 1. The automatic stay of 11 U.S.C. Section 362(a) be terminated for cause, including  
28 lack of adequate protection, as to the Debtor and the Debtor's estate.

**MOTION FOR RELIEF FROM STAY (REAL PROPERTY)**

1           2.       An Order Granting Relief from the Automatic Stay to allow Movant, its  
2                   successors, transferees, and assigns, to proceed under applicable non-bankruptcy  
3                   law to enforce its remedies against the Property, including to foreclose upon and  
4                   obtain possession of the Property.

5           3.       The 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived

6  
7       Dated: December 12, 2018

MERRITT LAW, INC.,  
A Professional Law Corporation

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9  
10                   /s/ Tye G. Merritt  
11                   TYE G. MERRITT, ESO.  
12                   Attorney for Movant HSBC Bank USA, National  
13                   Association as Trustee for the Holders of the  
14                   certificates issued by Deutsche Alt-A Securities  
15                   Mortgage Loan Trust, Series 2006-AR3  
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